IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.51 OF 2007
IN
SUMMARY SUIT NO.2325 OF 2006

M/s.Essar Graphics (India). ...Plaintiff.
Vs.
M/s. Shruti Innerwear & Anr. ...Defendants.
....
Mr. K.K. Shroff i/b. B. Amin & Co. for the Plaintiff.
Mr. Rajendra R. Mishra for Defendant Nos.1 and 2.
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CORAM : DR.D.Y.CHANDRACHUD, J.
16th April 2007.

P.C.:

The claim in the Summary Suit instituted under Order 37 of the Code of Civil Procedure, 1908, arises out of goods sold, supplied and delivered, the goods in question being corrugated boxes. In the particulars of claim at Exh.E to the plaint, the claim is founded on a total of 15 invoices. These invoices are Exh.A-7 to A-21. The invoices are between 26th April 2003 and 28th June 2004. The corresponding delivery challans are at Exh.B-7 to B-21. The total amount due under the invoices is Rs.2,85,305/-. At the hearing of the Summons for Judgment, Counsel appearing on behalf of the Plaintiff has stated on instructions that the claim in respect of the invoice at Sr. No.3 of the particulars of claim (Exh.A-

9 corresponding to the delivery challan at Exh.B-9) which is in the amount of Rs.5,180/- is dropped in view of the fact that there is neither a signature, nor a rubber stamp of the Defendants in token of the receipt of goods. After excluding the value of the aforesaid invoice, the claim in the suit would stand reduced to Rs.2,80,125/- being the principal amount of the remaining 14 invoices. With reference to each of the 14 invoices, there is an acknowledgement of receipt under the corresponding delivery challan. There is no dispute in regard to the quality of goods supplied or the price at which the goods were sold under the invoices that have been raised.

At the hearing of the Summons for Judgment, it has been asserted with reference to the defence taken in paragraph 5 of the reply that the delivery challans at Exhs.B6, B-9 and B-13 do not bear the signature of the Defendants. Exh.B-6, however, does not form the basis of the claim in the suit since as already noted earlier, the suit is founded on the invoices at Exhs.A-7 to A-21 and the corresponding delivery challans at Exhs.B-7 to B-21. The claim under the invoice relating to delivery challan at Exh.B-9 has been excluded from the claim, as noted above at the hearing. The

delivery challan at Exh.B-13 clearly bears a signature in token of receipt. In the reply there is no averment to the effect that the signature contained in the said delivery challan was not of an authorised representative of the Defendants. The other defence in paragraph 5 is that several delivery challans (Exhs.B-12 to B-18) do not bear the rubber stamp of the Defendants and that Exh.B-19 does not contain a signature in token of receipt or a rubber stamp. Significantly, the Defendants do not dispute that the signatures on the aforesaid delivery challans at Exh.B-12 to B-18 are not of their authorised representative. Moreover, it is an undisputed position that a notice of demand dated 14th March 2006 was addressed by the Plaintiff to the Defendants and there was no reply thereto. In these circumstances, the defence that has been urged is wholly lacking in merit.

However, having regard to the facts and circumstances of the case, it would be appropriate in the interests of justice if leave to defend the suit is granted conditional on a deposit of an amount of Rs.3,50,000/- within a period of 8 weeks from today. There shall be an order accordingly. Upon deposit, the amount shall be invested in a fixed deposit of a Nationalised Bank to be

renewed periodically during the pendency of the suit. Upon deposit, the Defendants would be at liberty to file a Written Statement within 8 weeks thereafter. The Summons for Judgment is accordingly disposed of.

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